Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Updating the Commission's Rule for Over-the-Air Reception Devices	)	WT Docket No. 19-71
	)	
	)	

REPLY COMMENTS OF STARRY, INC.

Starry, Inc. (Starry)[1] submits these reply comments highlighting the significant support on the record for the Federal Communications Commission's (FCC or Commission) proposal to modernize and update its rules regarding the placement of over-the-air reception devices (OTARD).[2] As the record reflects, this targeted rule change will stimulate the further deployment of advanced fixed wireless networks, implements National broadband and infrastructure policy, and is consistent with Commission authority and Congressional intent.[3]

At Starry, we work collaboratively with property owners and state and local governments. We strive to build strong relationships with portfolio companies, management companies, condo boards, home owners' associations, and local leaders. We are sensitive to their concerns – both in our work with them and in the context of this proceeding – and for the reasons discussed below, we believe the Commission's proposal is a limited rule change that for all practical purposes improves property owners rights and has little effect on state and local authority. We urge the Commission to move forward with its proposed changes to update and

[1] Starry, Inc., is a Boston- and New York-based technology company that is utilizing millimeter waves to re-imagine last-mile broadband access as an alternative to fixed wireline broadband. Starry is currently deploying its proprietary fixed 5G wireless technology in the Boston, Washington, DC, Los Angeles, New York City, and Denver areas, with plans to expand to our presence to additional U.S. cities through 2019.

[2] *Updating the Commission's Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Notice of Proposed Rulemaking, FCC No. 19-36, (rel. Apr. 12, 2019) (*NPRM*).

[3] Comments of Cherry Capital Connection, LLC, WT Docket No. 19-71 (filed June 3, 2019) (Cherry Capital Comments); Comments of CTIA, WT Docket No. 19-71 (filed June 3, 2019) (CTIA Comments); Comments of Google Fiber, Inc., WT Docket No. 19-71 (filed June 3, 2019) (Google Fiber Comments); Comments of Interstate Wireless Inc. D/b/a Az Airnet, WT Docket No. 19-71 (filed June 3, 2019) (Az Airnet Comments); Comments of MJM Telecom Corp., WT Docket No. 19-71 (filed June 3, 2019) (MJM Telecom Comments); Comments of NETEO Internet, WT Docket No. 19-71 (filed June 3, 2019) (NETEO Internet Comments); Comments of New Wave Net, WT Docket No. 19-71 (filed June 3, 2019) (New Wave Comments); Comments of WavSpeed Inc., WT Docket No. 19-71 (filed June 3, 2019) (WavSpeed Comments); Comments of WISPA, WT Docket No. 19-71 (filed June 3, 2019) (WISPA Comments).

modernize OTARD to improve and enhance fixed broadband connectivity in urban, suburban, and rural communities across the United States.

I. ENHANCING AND MODERNIZING OTARD IS CONSISTENT WITH THE ORIGINAL OTARD INTENT AND IS WITHIN THE COMMISSION'S AUTHORITY

As the record demonstrates, the proposed update to OTARD will stimulate the further deployment of fixed wireless networks as a critical part of the Nation's broadband infrastructure.[4] Doing so is consistent with the Commission's broadband and infrastructure policies.[5] Importantly, the record also demonstrates that updating OTARD will enhance competitive access to video programming, as a result of the fact that consumers are increasingly viewing video over-the-top instead of through linear video programming services.[6]

As WISPA notes, only 67% of American households subscribe to a linear video service today and the number of broadband-only households will increase to over 40 million by 2023, accounting for about a third of all households.[7] These consumers rely on access to competitive broadband services in order to access the full universe of video content. This is especially true in circumstances where consumers only have access to a broadband service offered by a traditional linear video provider that includes data caps, which by nature guides viewers into a narrower set of content that is owned by the providers (and that is zero-rated).

The direct relationship between the original intent in Section 207 and the Commission's proposals in the *NPRM* is clear – the proposed rule changes are necessary to improve competitive access to broadband services, and therefore to over-the-top video programming. As the Commission explained and the record shows, modern fixed wireless networks require the placement of base stations in strategic locations, and providers may have limited options for the most appropriate and effective vertical assets.[8] The inability to place a base station or repeater in a specific location can very well mean that the consumers that would be served by these sites

[4] *See* Az Airnet Comments at 1-3; Cherry Capital Comments; CTIA Comments at 3-5; Google Fiber Comments at 2-3; MJM Telecom Comments; WavSpeed Comments; WISPA Comments at 2-5.

[5] *See* FCC 5G FAST Plan, https://www.fcc.gov/5G; CTIA Comments at 2-5.

[6] *See* CTIA Comments at 4-5; WISPA Comments at 2-3, 5-6.

[7] WISPA Comments at 2-3; David Bloom, *Cord-Cutting Jumps 10 Points In Two Years As Most Desired Demos Drop Too*, Forbes (Jan. 31, 2019) (citing to the 2018 Annual PwC A New Video World Order: What Motivates Consumers? Study), https://www.forbes.com/sites/dbloom/2019/01/31/cord-cutting-study-pwc-nielsen-2019-pay-tv- statistics/#4f3de8772242.

[8] *NPRM* at ¶ 7; Letter from Claude Aiken, President and CEO, WISPA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 3 (filed Aug. 27, 2018) (WISPA Aug. 2018 *Ex Parte* Letter); Google Fiber Comments at 2; WISPA Comments at 5-9.

ultimately do not receive the new competitive service.[9] We therefore agree with WISPA that the Commission's proposal is entirely consistent with Section 207.[10]

Further, we agree with the Commission's proposal to rely on the legal analysis and authority established in the *Competitive Networks Order*.[11] Specifically, we agree that even though this action is consistent with Section 207, Section 303 stands as an independent source of authority to regulate radio transmissions and can serve as the basis for adopting the rule changes proposed in the *NPRM*.[12] As WISPA explains, in the *Competitive Networks Order* the Commission explicitly concluded that although Section 207 directed the Commission to take action to protect the placement of antennas that receive or transmit a signal, it did not limit the "independent exercise of the same authority under Section 303 and other provisions."[13]

II. MODERNIZING OTARD TO COVER FIXED WIRELESS BASE STATIONS WILL NOT SIGNIFICANTLY ALTER STATE AND LOCAL AUTHORITY

Depending on the type of service offered through a fixed wireless antenna, the spectrum utilized, and the size of that antenna, it might fall within three different federal regulatory constructs (and countless state and local regulatory constructs). To the extent the antenna is used to provide a fixed telecommunications service that antenna is likely covered under Section 332(c).[14] If the antenna is used to provide only an information service, then Section 332(c) likely does not apply because it would not be a "personal wireless service facility" under a plain reading of the statue.[15] Similarly, if the antenna transmits over unlicensed spectrum, Section 332(c) does not apply because an "unlicensed wireless service" requires the provision of a "telecommunications service."[16] However, in both instances Section 6409 could apply to the

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[9] Cherry Capital Comments; MJM Telecom Comments; WavSpeed Comments.

[10] WISPA Comments at 12-15.

[11] *NPRM* at ¶ 12.

[12] *Promotion of Competitive Networks in Local Telecommunications Markets, et al.*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, 23031, ¶ 106 (2000) (*Competitive Networks Order*).

[13] *Id.*; WISPA Comments at 13. We also agree that Sections 1 and 4(i) serve as additional sources of authority to fulfill specific statutory goals – here to reduce barriers to deployment of new broadband services. *See* WISPA Comments at 13.

[14] 47 U.S.C. § 332(c).

[15] Section 332(c)(7) preserves state and local authority over the placement of "personal wireless service facilities." *Id.* The same section defines personal wireless service facilities as facilities for the provision of personal wireless services, which in turn are commercial mobile services, unlicensed wireless services, and common carrier wireless exchange services. *Id.* § 332(c)(7)(C). Commercial mobile services and unlicensed wireless services both require the provision of a telecommunications service, and the Commission has determined that broadband internet access service is not a telecommunications service. *Id*; *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 2018).

[16] 47 U.S.C. § 332(c)(7)(C)(iii).

extent that the antenna qualifies under the terms of Section 1.40001 of the Commission's rules.[17] Finally, in the event that an antenna is used to provide an information service but does not quality under Section 6409, the applicable regulatory scheme is at best ambiguous, and the federal government likely retains authority in the absence of any other stated reservation of authority for state and local governments.

The Commission need not make a definitive ruling on these issues in the context of the *NPRM*. By simply extending OTARD to cover all fixed wireless equipment that meets the size restriction, the Commission can create a uniform regulatory regime that applies to all qualifying fixed wireless equipment regardless of the service offered or the spectrum used. Importantly, this is a regulatory regime that explicitly provides state and local government authority to adopt restrictions that accomplish a clearly defined, legitimate safety objective or that are necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places.[18] This is true and particularly important in the context of the third scenario above – in the event that an antenna is used to provide an information service and does not qualify under Section 6409, this decision would effectively grant new state and local authority.

We respect the fact that state and local governments may be facing requests to install a significant number of small cells across their cities and communities. And we are sensitive to the notion that this *NPRM* can appear to be another attack on state and local rights. But, we know that many state and local governments are familiar with fixed wireless deployments and fundamentally understand the relative limited scale of fixed deployments and the limited potential impact on their communities. As we pointed out in our initial comments, because of the point-to-multipoint nature of modern fixed wireless networks, there are proportionally more fixed wireless receivers – already covered under OTARD – than there are fixed wireless base stations.[19] The proposed update to OTARD can enhance state and local authority in some respects, while streamlining the review of sites that should either be approved under Section 6409 or by their nature will have a minimal impact on the surrounding community.

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[17] 47 U.S.C. § 1455; 47 C.F.R. § 1.40001. Specifically, if the request is an eligible facilities request that does not substantially change the physical dimensions of a tower or base station, the state or local government may not deny and shall approve the request. 47 C.F.R. § 1.40001(c).

[18] 47 C.F.R. § 1.4000(b).

[19] Comments of Starry, Inc., WT Docket No. 19-71 (filed June 3, 2019) (Starry Comments).

III. PROPERTY OWNERS WILL BENEFIT FROM THE PROPOSED RULE CHANGES

The Real Estate Associations correctly point out that the owners of properties across the country play a very important role in the delivery of broadband service to consumers.[20] For any provider that seeks to offer service and improve connectivity in an multi-tenant environment or private community, the property owner or manager is primarily responsible for approving the installation and delivery of that service to the building or community. We understand this construct and work to develop partnerships with portfolio companies and management companies nationwide to bring our service to their buildings and communities.[21] And when we do, their residents benefit from improved service quality at a lower price point. It's a win-win-win. For the reasons discussed below, there is nothing in the Commission's proposal that would change this dynamic. Furthermore, the Commission's proposal would not change existing or future rooftop lease rights, and would not undermine property owners' abilities to monetize their buildings as part of the fixed wireless infrastructure ecosystem.

If the Commission updates OTARD to cover fixed base stations by removing the word "customer" in Section 1.4000(a)(2),[22] it would preserve a building owners' ability to manage their properties while also improve the viability of commercial non-residential buildings to be used to host fixed base stations. To be more specific: in that scenario, the building owner or manager could be the antenna user for the purpose of the rule, which would explicitly grant them the right to install fixed wireless base stations on their own property.

There is little risk that this rule change would result in the installation of base stations on customers premises in a multi-tenant environment under the premise that the individual unit owner or lessee is the antenna user. Section 1.4000 is founded on the basis of the antenna user having exclusive use or control of the property, where the user has a direct or indirect ownership

[20] Joint Comments of the National Multifamily Housing Council, the National Apartment Association, the Building Owners and Managers Association International, the Institute of Real Estate Management, Nareit, the National Association of Realtors, the National Real Estate Investors Association, and the Real Estate Roundtable, WT Docket No. 19-71 at 3-11 (filed June 3, 2019) (Real Estate Associations Joint Comments).

[21] *See*, *e.g.*, *id.* Exhibit C, Declaration of Greg MacDonald.

[22] 47 C.F.R. § 1.4000(a)(2).

or leasehold interest in the property.[23] In applying the rule, the FCC's Media Bureau relies on the "property description set forth in the lease or other controlling document."[24]

As a practical matter, it would be infeasible to install a base station within a customer's unit. Base stations require fiber or microwave backhaul, which would be difficult to pull to or install at a customer's premises. Providers also need access to their base station equipment 24 hours a day, 7 days a week, which would not be possible if located in an individual's unit.[25] Ultimately, property owners and managers can update their existing OTARD covenants to address base stations in the same way as receive antennas.

Furthermore, by simply removing the word "customer" from the rule, building owners would be able to streamline the process for installing fixed wireless equipment on non-residential structures under the same leasing environment that exists today.[26] As discussed in our comments, fixed wireless deployments rely on a targeted set of vertical assets within a service area.[27] Non-residential buildings and structures play an important role by offering potential opportunities to site infrastructure within the appropriate distance from a target service area and at an appropriate height. By extending the rule to cover base stations that serve customer premises but that might not be located on them, non-resident structures can fall under the same regulatory regime. To the extent that the Commission deems the entity that grants the wireless provider the right to install the antenna on the building the "antenna owner" for the purposes of OTARD, the leasing structure could be identical to the leasing structure in place today.

We work in partnership with property owners and managers to bring service to their residents. We do so through negotiated access agreements for the buildings. We also primarily site our base stations on rooftops through access and lease agreements. The Commission's proposal does not change this dynamic, it simply streamlines the siting process for all fixed wireless equipment, thereby bringing service (and secondarily, revenue) to buildings faster.

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[23] *Id.* § 1.4000(a)(1).

[24] *See In the Matter of Corey & Juanita Walker, Petition for Declaratory Ruling Under 47 C.F.R. § 1.4000*, CSR 8477-0, Declaratory Ruling, DA 11-1271 (Media Bureau, rel. July 27, 2011).

[25] *See*, *e.g.*, Google Fiber Comments at 3 (explaining that its infrastructure requires fiber optic cable and connection to ports within the building).

[26] *See* Az Airnet Comments at 3; Joint Real Estate Comments at 9-11.

[27] Starry Comments at 6-7.

IV. CONCLUSION

We support the Commission's proposal to extend OTARD to cover any fixed wireless antenna that meets the existing size restriction, while maintaining the rights of state and local governments and home owners' associations to adopt reasonable restrictions to achieve a safety objective or preserve historic properties. This rule change is consistent with the intent of OTARD and is squarely within the Commission's authority. We urge the Commission to adopt its proposal to help bring competitive broadband services to consumers in rural, suburban, and urban communities nationwide.

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